

Arts Law: Not Just for the Entertainment Lawyer

By Elizabeth T Russell

Chances are, you already practice arts law. You may not practice *art* law because few attorneys do. But *arts* law? Very likely.

Art law is a niche field of practice. It involves legal issues surrounding the creation, protection, distribution, and disposition of visual art otherwise known as “pictorial, graphic, and sculptural works” (PiGS) under Section 102 of the federal Copyright Act of 1976 (17 U.S.C. § 102). *Art* law practitioners provide counsel in transactions among fine artists, galleries, dealers, and collectors. They negotiate and draft fine art commissioning agreements and help clients navigate state laws that govern prints and fine art multiples. They also advise artists about moral rights, resale rights, First Amendment issues, and, of course, copyright and trademark.

Art law is not just about the artist’s intellectual property interests. It is just as much about dealers and collectors buying, selling, and transferring the physical media embodying an artist’s work. Accordingly, *art* law attorneys need to understand trusts and estates, taxation, secured transactions, and the Uniform Commercial Code. *Art* law practitioners also advise on international treaties and patrimony laws concerning the illicit trade in art and cultural property.

PiGS is only one category of works of authorship protected under section 102. **Entertainment law** is a much broader field of practice that often involves the other seven categories:

- literary works;
- musical works, including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic works;
- motion pictures and other audiovisual works;
- sound recordings; and
- architectural works.

Entertainment lawyers serve the music, film, television, theater, and publishing industries and work in many different practice areas, including intellectual property (copyright/trademark/privacy/publicity), labor and employment, real estate, bankruptcy, securities, antitrust, immigration, international, tax, and insurance. The entertainment industry is tough and fast-paced, and transactions involve substantial sums. Entertainment law clients are typically at or climbing to the top of their game and generate a lot of money for a lot of people. Attorneys who wish to practice *entertainment* law are well-advised to secure employment in a large firm or company with offices near salt water or in a city beginning with “N” and ending with “ashville.”

But not every client is a mega-star. Most hobbyists and arts entrepreneurs, in fact, write, paint, or record simply for the love of it. These clients might not be wealthy, but many do make a living from their artistic work. They confront many of the same legal issues as big stars, just on a smaller scale. Let’s face it. If the average painter, sculptor, or local gallery owner walked into a big New York City law firm seeking representation from its *art* law group, it wouldn’t happen. The dollars aren’t there. Similarly, the local singer-songwriter hasn’t a chance with a large *entertainment* law firm. Where do

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these clients turn for legal advice or representation? An **arts law** attorney.

In my view, *art* law and *entertainment* law practitioners focus on the stars. *Arts* law attorneys serve everyone else. *Arts* law is an umbrella that includes not only *art* law and *entertainment* law, but also legal service to the average creative person and smaller-scale creative business. In my practice, I call upon the same legal training and apply the same legal concepts as *art* and *entertainment* attorneys; however, I choose to work with local, regional, and emerging artists and businesses that might never rise to stardom or notable financial success. (There are, by the way, far more of these clients than there are big stars!) Because it's such a different practice, I refer to myself as an *arts* attorney rather than an *art* or *entertainment* practitioner.

But what about you? I began this article with the suggestion that you may already practice *arts* law. The creative industries employ millions of people and contribute significantly to our national economy. A 2007 report from Americans for the Arts showed that in 2007 there were 546,558 U.S. businesses involved in the creation or distribution of the arts, employing nearly 2.7 million people. Representative sectors include museums and collections; the performing arts; visual art and photography; film, radio, and television; design and publishing; and arts schools and services. If you are providing tax, real estate, or litigation services, for example, for these types of clients, you are practicing *arts* law.

Arts law also plays an increasingly significant role in the general business world. Businesses that use social networking as a business development tool need content clearance and protection. Does your client use music for those on hold, online, or in the background of its retail space? Did a client retain a Web designer? A videographer? Does a client's Web site solicit user-generated content?

Look around. *Arts* law is everywhere.

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